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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1978**

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**Introduced by Assembly Member Jones-Sawyer**

February 19, 2014

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An act to amend Sections 10601.2 and 10850.4 of, and to add Section 10605.5 to, the Welfare and Institutions Code, relating to child welfare services.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1978, as amended, Jones-Sawyer. Child welfare services.

Under existing law, the State Department of Social Services oversees the administration of county public social services, including child welfare services. Existing law requires the department to establish the California Child and Family Service Review System, in order to review all county child welfare systems.

This bill, in relation to these reviews, would require each county to consult with specified stakeholders in developing the county self-assessments and county improvement plans, or any subsequent county self-assessments, as specified. The bill would also require the county improvement plans to include a separately titled provision that lists and provides the rationale for proposed operational improvements that may be implemented at a cost savings to the county or within

existing resources. By increasing *the* duties of county officials, the bill would impose a state-mandated local program.

Existing law authorizes the department to conduct or have conducted audits and reviews in order to meet its obligations for child welfare programs and to ensure the protection of children and families. *Existing law, the California Whistleblower Protection Act, prohibits retaliation or reprisal against a state employee for reporting improper governmental activities or making protected disclosures.*

~~This bill would prohibit a county child welfare agency that is an employer of social workers engaged in providing child welfare services from retaliating against a social worker if the social worker has reasonable cause to believe that a policy, procedure, or practice related to the provision of child welfare services endangers the health or well-being of a child or children, and the social worker discloses this information to a government or law enforcement agency, an appointed or elected official, or the public.~~ *prohibit an employee of a county child welfare agency from directly or indirectly using or attempting to use his or her official authority or influence for specified purposes, including intimidation or coercion of a county social worker, if that county social worker has reasonable cause to believe that a policy, procedure, or practice constitutes improper governmental activity, as defined, and the social worker discloses the information to a government or law enforcement agency, an appointed or elected official, or the public.*

Existing law authorizes the department and the county welfare department or agency to comment on a child fatality once certain documents from the child's case file have been released by the custodian of records, within the scope of the release.

This bill would additionally authorize a county child welfare social worker to comment for purposes of these provisions, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. (a) This act shall be known as the Child Welfare  
2 Social Worker Empowerment and Foster Child Protection Act.

3     (b) The Legislature finds and declares that, while California  
4 foster children are in foster care, they are uniquely dependent upon  
5 the lawful, efficient, and competent delivery of state and local  
6 government services and implementation of state and federal law.

7     (c) The Legislature further finds and declares that the special  
8 and uniquely vulnerable status of foster children warrants extending  
9 whistleblower protections for state employees to county child  
10 welfare social workers to ensure that each worker, without fear of  
11 retaliation, can advocate for policies that benefit every child and  
12 publicly participate in discussions about each child's well-being.

13     (d) The Legislature further finds and declares that county child  
14 welfare social workers who implement state and federal policy  
15 related to the delivery of services and implementation of programs  
16 benefitting foster children should have an avenue to suggest  
17 cost-saving efficiencies in the delivery of services to foster  
18 children, in a fashion that is transparent and accountable to the  
19 public.

20     SEC. 2. Section 10601.2 of the Welfare and Institutions Code  
21 is amended to read:

22     10601.2. (a) The State Department of Social Services shall  
23 establish, by April 1, 2003, the California Child and Family Service  
24 Review System, in order to review all county child welfare systems.  
25 These reviews shall cover child protective services, foster care,  
26 adoption, family preservation, family support, and independent  
27 living.

28     (b) Child and family service reviews shall maximize compliance  
29 with the federal regulations for the receipt of money from Subtitle  
30 E (commencing with Section 470) of Title IV of the federal Social  
31 Security Act (42 U.S.C. Sec. 670 and following) and ensure  
32 compliance with state plan requirements set forth in Subtitle B  
33 (commencing with Section 421) of Title IV of the federal Social  
34 Security Act (42 U.S.C. Sec. 621 and following).

35     (c) (1) (A) The California Health and Human Services Agency  
36 shall convene a workgroup comprised of representatives of the  
37 Judicial Council, the State Department of Social Services, the State  
38 Department of Health Care Services, the State Department of

1 Education, the State Department of Justice, any other state  
2 departments or agencies the California Health and Human Services  
3 Agency deems necessary, the County Welfare Directors  
4 Association, the California State Association of Counties, the Chief  
5 Probation Officers of California, the California Youth Connection,  
6 and representatives of California tribes, interested child advocacy  
7 organizations, researchers, and foster parent organizations. The  
8 workgroup shall establish a workplan by which child and family  
9 service reviews shall be conducted pursuant to this section,  
10 including a process for qualitative peer reviews of case information.

11 (B) At a minimum, in establishing the workplan, the workgroup  
12 shall consider any existing federal program improvement plans  
13 entered into by the state pursuant to federal regulations, the  
14 outcome indicators to be measured, compliance thresholds for each  
15 indicator, timelines for implementation, county review cycles,  
16 uniform processes, procedures and review instruments to be used,  
17 a corrective action process, and any funding or staffing increases  
18 needed to implement the requirements of this section. The agency  
19 shall broadly consider collaboration with all entities to allow the  
20 adequate exchange of information and coordination of efforts to  
21 improve outcomes for foster youth and families.

22 (2) In developing county self-assessments and county  
23 improvement plans pursuant to this section, or any subsequent  
24 county self-assessments pursuant to this section, each county shall  
25 consult with stakeholders, including, but not limited to, county  
26 child welfare agencies and probation agency staff at all levels,  
27 current and former foster children, children's attorneys, and foster  
28 care providers. The county shall consult with at least one county  
29 child welfare worker named by the bargaining unit representing  
30 children's social workers.

31 (d) (1) The California Child and Family Service Review System  
32 outcome indicators shall be consistent with the federal child and  
33 family service review measures and standards for child and family  
34 outcomes and system factors authorized by Subtitle B (commencing  
35 with Section 421) and Subtitle E (commencing with Section 470)  
36 of Title IV of the federal Social Security Act and the regulations  
37 adopted pursuant to those provisions (Parts 1355 to 1357, inclusive,  
38 of Title 45 of the Code of Federal Regulations).

39 (2) During the first review cycle pursuant to this section, each  
40 county shall be reviewed according to the outcome indicators

1 established for the California Child and Family Service Review  
2 System.

3 (3) For subsequent reviews, the workgroup shall consider  
4 whether to establish additional outcome indicators that support the  
5 federal outcomes and any program improvement plan, and promote  
6 good health, mental health, behavioral, educational, and other  
7 relevant outcomes for children and families in California's child  
8 welfare services system.

9 (4) The workgroup shall convene as necessary to update the  
10 outcome indicators described in paragraph (1).

11 (5) The county improvement plans developed pursuant to this  
12 section that are approved by the county board of supervisors shall  
13 include a separately titled provision that lists and provides the  
14 rationale for proposed operational improvements identified during  
15 the stakeholder process described in paragraph (2) of subdivision  
16 (c) that may be implemented at a cost savings to the county or  
17 within existing county resources.

18 (e) The State Department of Social Services shall identify and  
19 promote the replication of best practices in child welfare service  
20 delivery to achieve the measurable outcomes established pursuant  
21 to subdivision (d).

22 (f) Notwithstanding Section 10231.5 of the Government Code,  
23 the State Department of Social Services shall provide information  
24 to the Assembly Committee on Budget and the Senate Committee  
25 on Budget and Fiscal Review and appropriate legislative policy  
26 committees annually, beginning with the 2002–03 fiscal year, on  
27 all of the following:

28 (1) The department's progress in planning for the federal child  
29 and family service review to be conducted by the United States  
30 Department of Health and Human Services and, upon completion  
31 of the federal review, the findings of that review, the state's  
32 response to the findings, and the details of any program  
33 improvement plan entered into by the state.

34 (2) The department's progress in implementing the California  
35 child and family service reviews, including, but not limited to, the  
36 timelines for implementation, the process to be used, and any  
37 funding or staffing increases needed at the state or local level to  
38 implement the requirements of this section.

39 (3) The findings and recommendations for child welfare system  
40 improvements identified in county self-assessments and county

1 system improvement plans, including information on common  
2 statutory, regulatory, or fiscal barriers identified as inhibiting  
3 system improvements, any recommendations to overcome those  
4 barriers, and, as applicable, information regarding the allocation  
5 and use of the moneys provided to counties pursuant to subdivision  
6 (i).

7 (g) Effective April 1, 2003, the existing county compliance  
8 review system shall be suspended to provide to the State  
9 Department of Social Services sufficient lead time to provide  
10 training and technical assistance to counties for the preparation  
11 necessary to transition to the new child and family service review  
12 system.

13 (h) Beginning January 1, 2004, the department shall commence  
14 individual child and family service reviews of California counties.  
15 County child welfare systems that do not meet the established  
16 compliance thresholds for the outcome measures that are reviewed  
17 shall receive technical assistance from teams made up of state and  
18 peer-county administrators to assist with implementing best  
19 practices to improve their performance and make progress toward  
20 meeting established levels of compliance.

21 (i) (1) To the extent that funds are appropriated in the annual  
22 Budget Act to enable counties to implement approaches to  
23 improving their performance on the outcome indicators under this  
24 section, the department, in consultation with counties, shall  
25 establish a process for allocating the funds to counties.

26 (2) The allocation process shall take into account, at a minimum,  
27 the extent to which the proposed funding would be used for  
28 activities that are reasonably expected to help the county make  
29 progress toward the outcome indicators established pursuant to  
30 this section, and the extent to which county funding for the Child  
31 Abuse Prevention, Intervention, and Treatment program is aligned  
32 with the outcome indicators.

33 (3) To the extent possible, a county shall use funds in a manner  
34 that enables the county to access additional federal, state, and local  
35 funds from other available sources. However, a county's ability  
36 to receive additional matching funds from these sources shall not  
37 be a determining factor in the allocation process established  
38 pursuant to this subdivision.

1 (4) The department shall provide information to the appropriate  
2 committees of the Legislature on the process established pursuant  
3 to this subdivision for allocating funds to counties.

4 (j) (1) Counties shall continue to be responsible for and  
5 accountable to the department for child welfare program  
6 performance measures, including all of the following:

7 (A) The outcome and systemic factor measures contained in the  
8 federal Department of Health and Human Services Child and  
9 Family Services Review Procedures Manual, Appendix B, Index  
10 of Outcomes and Systemic Factors, and Associated Items and Data  
11 Indicators, issued pursuant to Sections 1355.34(b) and 1355.34(c)  
12 of Title 45 of the Code of Federal Regulations.

13 (B) Information and other requirements necessary for the  
14 California Child and Family Service Review System, as required  
15 pursuant to this section.

16 (C) Monthly caseworker visits with a child in care.

17 (D) Timeliness to begin an investigation of allegations of child  
18 abuse or neglect.

19 (E) Notwithstanding the rulemaking provisions of the  
20 Administrative Procedure Act (Chapter 3.5 (commencing with  
21 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
22 Code), other performance measures resulting from new federal  
23 mandates or court decrees as specified in an all-county letter issued  
24 by the department.

25 (2) The department shall monitor, on an ongoing basis, county  
26 performance on the measures specified in paragraph (1).

27 (3) At least once every five years, the department shall conduct  
28 a comprehensive review of county performance on the measures  
29 specified in paragraph (1).

30 (4) (A) The department shall periodically update the process  
31 guides utilized by counties to prepare the self assessments and  
32 system improvement plans to promote implementation and  
33 evaluation of promising practices and use of data.

34 (B) The process guides also shall include, but not be limited to,  
35 both of the following:

36 (i) County evaluation of demographics for the children and  
37 families served and effectiveness of the system improvement  
38 activities for these populations.

1 (ii) A description of the process by which the department and  
2 counties shall develop mutually agreed upon performance targets  
3 for improvement.

4 (5) The department, in consultation with counties, shall develop  
5 a process for resolving any disputes regarding the establishment  
6 of appropriate targets pursuant to the process provided in paragraph

7 (4).

8 (6) A county shall submit an update to the department, no less  
9 than annually, on its progress in achieving improvements from the  
10 county's baseline for the applicable measure. The department may  
11 require a county that has not met its performance targets to submit  
12 and implement a corrective action plan, as determined by the  
13 director.

14 (k) Beginning in the 2011–12 fiscal year, and for each fiscal  
15 year thereafter, funding and expenditures for programs and  
16 activities required under this section shall be in accordance with  
17 the requirements provided in Sections 30025 and 30026.5 of the  
18 Government Code.

19 SEC. 3. Section 10605.5 is added to the Welfare and  
20 Institutions Code, to read:

21 10605.5. (a) ~~A county child welfare agency that is an employer~~  
22 ~~of social workers engaged in providing child welfare services shall~~  
23 ~~not retaliate against a social worker if the social worker has~~  
24 ~~reasonable cause to believe that a policy, procedure, or practice~~  
25 ~~related to the provision of child welfare services endangers the~~  
26 ~~health or well-being of a child or children and the social worker~~  
27 ~~discloses this information to a government or law enforcement~~  
28 ~~agency, an appointed or elected official, or the public. (1) If a~~  
29 ~~county social worker who is engaged in providing child welfare~~  
30 ~~services has reasonable cause to believe that a policy, procedure,~~  
31 ~~or practice related to the provision of child welfare services~~  
32 ~~constitutes improper governmental activity and the social worker~~  
33 ~~discloses this information to a government or law enforcement~~  
34 ~~agency, an appointed or elected official, or the public, an employee~~  
35 ~~of a county child welfare agency shall not directly or indirectly~~  
36 ~~use or attempt to use his or her official authority or influence to~~  
37 ~~engage in the conduct proscribed by Section 8547.3 of the~~  
38 ~~Government Code against that county social worker.~~

39 (2) *For purposes of this section, "improper governmental*  
40 *activity" includes any policy, procedure, or practice related to the*

1 *provision of child welfare services that has contributed to the death*  
2 *of a child or endangers the health or well-being of a child or*  
3 *children.*

4 (b) Nothing in this section authorizes a social worker employed  
5 by a county child welfare agency to disclose the identity of a child  
6 or any portion of a case file.

7 (c) For purposes of this section, “county child welfare agency”  
8 includes a county welfare department, child welfare department,  
9 and any other county agency that employs social workers and is  
10 responsible for the placement and supervision of children and  
11 youth in foster care.

12 SEC. 4. Section 10850.4 of the Welfare and Institutions Code  
13 is amended to read:

14 10850.4. (a) Within five business days of learning that a child  
15 fatality has occurred in the county and that there is a reasonable  
16 suspicion that the fatality was caused by abuse or neglect, the  
17 custodian of records for the county child welfare agency, upon  
18 request, shall release the following information:

19 (1) The age and gender of the child.

20 (2) The date of death.

21 (3) Whether the child was in foster care or in the home of his  
22 or her parent or guardian at the time of death.

23 (4) Whether an investigation is being conducted by a law  
24 enforcement agency or the county child welfare agency.

25 (b) All cases in which abuse or neglect leads to a child’s death  
26 shall be subject to the disclosures required in subdivision (c). Abuse  
27 or neglect is determined to have led to a child’s death if one or  
28 more of the following conditions are met:

29 (1) A county child protective services agency determines that  
30 the abuse or neglect was substantiated.

31 (2) A law enforcement investigation concludes that abuse or  
32 neglect occurred.

33 (3) A coroner or medical examiner concludes that the child who  
34 died had suffered abuse or neglect.

35 (c) Upon completion of the child abuse or neglect investigation  
36 into the child’s death, as described in subdivision (b), the following  
37 documents from the juvenile case file shall be released by the  
38 custodian of records upon request, subject to the redactions set  
39 forth in subdivision (e):

40 (1) All of the information in subdivision (a).

(2) For cases in which the child's death occurred while living with a parent or guardian, all previous referrals of abuse or neglect of the deceased child while living with that parent or guardian shall be disclosed along with the following documents:

(A) The emergency response referral information form and the emergency response notice of referral disposition form completed by the county child welfare agency relating to the abuse or neglect that caused the death of the child.

(B) Any cross reports completed by the county child welfare agency to law enforcement relating to the deceased child.

(C) All risk and safety assessments completed by the county child welfare services agency relating to the deceased child.

(D) All health care records of the deceased child, excluding mental health records, related to the child's death and previous injuries reflective of a pattern of abuse or neglect.

(E) Copies of police reports about the person against whom the child abuse or neglect was substantiated.

(3) For cases in which the child's death occurred while the child was in foster care, the following documents in addition to those specified in paragraphs (1) and (2) generated while the child was living in the foster care placement that was the placement at the time of the child's death:

(A) Records pertaining to the foster parents' initial licensing and renewals and type of license or licenses held, if in the case file.

(B) All reported licensing violations, including notices of action, if in the case file.

(C) Records of the training completed by the foster parents, if in the case file.

(d) The documents listed in subdivision (c) shall be released to the public by the custodian of records within 10 business days of the request or the disposition of the investigation, whichever is later.

(e) (1) Prior to releasing any document pursuant to subdivision (c), the custodian of records shall redact the following information:

(A) The names, addresses, telephone numbers, ethnicity, religion, or any other identifying information of any person or institution, other than the county or the State Department of Social Services, that is mentioned in the documents listed in paragraphs (2) and (3) of subdivision (c).

1 (B) Any information that would, after consultation with the  
2 district attorney, jeopardize a criminal investigation or proceeding.

3 (C) Any information that is privileged, confidential, or not  
4 subject to disclosure pursuant to any other state or federal law.

5 (2) (A) The State Department of Social Services shall  
6 promulgate a regulation listing the laws described in subparagraph  
7 (C) of paragraph (1) and setting forth standards governing  
8 redactions.

9 (B) Notwithstanding the rulemaking provisions of the  
10 Administrative Procedure Act (Chapter 3.5 (commencing with  
11 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
12 Code), until emergency regulations are filed with the Secretary of  
13 State, the State Department of Social Services may implement the  
14 changes made to Section 827 and this section at the 2007–08  
15 Regular Session of the Legislature through all-county letters or  
16 similar instructions from the director. The department shall adopt  
17 emergency regulations, as necessary to implement those changes,  
18 no later than January 1, 2009.

19 (C) The adoption of regulations pursuant to this paragraph shall  
20 be deemed to be an emergency necessary for the immediate  
21 preservation of the public peace, health, safety, or general welfare.  
22 The emergency regulations authorized by this section shall be  
23 exempt from review by the Office of Administrative Law. The  
24 emergency regulations authorized by this section shall be submitted  
25 for filing with the Secretary of State and shall remain in effect for  
26 no more than 180 days, by which time the final regulations shall  
27 be adopted.

28 (f) Upon receiving a request for the documents listed in  
29 subdivision (c), the custodian of records shall notify and provide  
30 a copy of the request upon counsel for any child who is directly  
31 or indirectly connected to the juvenile case file. If counsel for a  
32 child, including the deceased child or any sibling of the deceased  
33 child, objects to the release of any part of the documents listed in  
34 paragraphs (2) and (3) of subdivision (c), they may petition the  
35 juvenile court for relief to prevent the release of any document or  
36 part of a document requested pursuant to paragraph (2) of  
37 subdivision (a) of Section 827.

38 (g) Documents from the juvenile case file, other than those listed  
39 in paragraphs (2) and (3) of subdivision (c), shall only be disclosed  
40 upon an order by the juvenile court pursuant to Section 827.

1 (h) Once documents pursuant to this section have been released  
2 by the custodian of records, the State Department of Social Services  
3 or the county welfare department or agency may comment on the  
4 case within the scope of the release. If the county welfare  
5 department or agency comments publicly about the case within  
6 the scope of the release pursuant to this subdivision, the social  
7 worker on the case may also comment publicly about the case  
8 within the scope of the release.

9 (i) Information released by a custodian of records consistent  
10 with the requirements of this section does not require prior notice  
11 to any other individual.

12 (j) Each county welfare department or agency shall notify the  
13 State Department of Social Services of every child fatality that  
14 occurred within its jurisdiction that was the result of child abuse  
15 or neglect. Based on these notices and any other relevant  
16 information in the State Department of Social Services' possession,  
17 the department shall annually issue a report identifying the child  
18 fatalities and any systemic issues or patterns revealed by the notices  
19 and other relevant information. The State Department of Social  
20 Services, after consultation with interested stakeholders, shall  
21 provide instructions by an all-county letter regarding the procedure  
22 for notification.

23 (k) For purposes of this section, the following definitions apply:

24 (1) "Child abuse or neglect" has the same meaning as defined  
25 in Section 11165.6 of the Penal Code.

26 (2) "Custodian of records," for the purposes of this section and  
27 paragraph (2) of subdivision (a) of Section 827, means the county  
28 welfare department or agency.

29 (3) "Juvenile case files" or "case files" include any juvenile  
30 court files, as defined in Rule 5.552 of the California Rules of  
31 Court, and any county child welfare department or agency or State  
32 Department of Social Services records regardless of whether they  
33 are maintained electronically or in paper form.

34 (4) "Substantiated" has the same meaning as defined in Section  
35 11165.12 of the Penal Code.

36 (l) A person disclosing juvenile case file information as required  
37 by this section shall not be subject to suit in civil or criminal  
38 proceedings for complying with the requirements of this section.

39 (m) This section shall apply only to deaths that occur on or after  
40 January 1, 2008.

1 (n) Nothing in this section shall require a custodian of records  
2 to retain documents beyond any date otherwise required by law.

3 (o) Nothing in this section shall be construed as requiring a  
4 custodian of records to obtain documents not in the case file.

5 SEC. 5. If the Commission on State Mandates determines that  
6 this act contains costs mandated by the state, reimbursement to  
7 local agencies and school districts for those costs shall be made  
8 pursuant to Part 7 (commencing with Section 17500) of Division  
9 4 of Title 2 of the Government Code.